

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 - - - - -x

4 In the Matter of:

5 RESIDENTIAL CAPITAL, LLC, et al.,

Case No.

6 Debtors.

12-12020-mg

7 - - - - -x

8 OFFICIAL COMMITTEE OF UNSECURED

9 CREDITORS, et al., Plaintiffs,

Adv. Proc. No.

10 - against -

13-01277-mg

11 UMB BANK, N.A., et al., Defendants.

12 - - - - -x

13 RESIDENTIAL CAPITAL, LLC, et al.,

14 Plaintiffs,

Adv. Proc. No.

15 - against -

13-01343-mg

16 UMB BANK, N.A., Defendant.

17 - - - - -x

18 United States Bankruptcy Court

19 One Bowling Green

20 New York, New York

21 November 14, 2013

22 2:06 PM

23 B E F O R E:

24 HON. MARTIN GLENN

25 U.S. BANKRUPTCY JUDGE

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Pre-Trial Conference, on the Record, RE: Phase II of
Trial/Chapter 11 Plan Confirmation

Adversary proceeding: 13-01277-mg Official Committee of
Unsecured Creditors, et al. v. UMB Bank, N.A., et al. Pre-
Trial Conference, on the Record, RE: Phase II of Trial/Chapter
11 Plan Confirmation

Adversary proceeding: 13-01343-mg Residential Capital, LLC, et
al. v. UMB Bank, N.A. in its Capacity as Indenture Trust
Pre-Trial Conference, on the Record, RE: Phase II of
Trial/Chapter 11 Plan Confirmation

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. All right. We're here
3 in Residential Capital, number 12-12020 and in the adversary
4 proceeding, 13-01277 and 13-01343. Okay.

5 Mr. Lee, before you begin, first let me apologize to
6 everybody about any confusion about whether this hearing would
7 take place in open court or on the telephone. Until sometime
8 this morning, it wasn't clear where I would be. I was in White
9 Plains this morning and fortunately was able to complete my
10 jury service without having served on a jury. So that enabled
11 me to get back here. So I appreciate the confusion. Anybody
12 who is on the phone, that's fine and we're going forward with
13 the final pre-trial conference before the start of the combined
14 Phase II trial with the JSNs and UMB and the confirmation
15 hearing.

16 All right, Mr. Lee?

17 MR. LEE: Good afternoon, Your Honor. Gary Lee from
18 Morrison & Foerster for the debtors. Pleased to be here before
19 you. Our gain is the White Plains jury pool loss.

20 THE COURT: I think the chances of me having served on
21 a jury were pretty remote but in any event -- before you begin,
22 let me just -- I anticipate filing my opinion from the Phase I
23 trial tomorrow morning. It remains a work in progress. It's
24 getting closer but -- well, I should say sometime tomorrow.
25 We'll see what time tomorrow but it's quite lengthy; let me put

1 it that way. Go ahead.

2 MR. LEE: So, Your Honor, I think what I wanted to do
3 this afternoon was to answer the four questions that you posed
4 during our last status conference, answer any other questions
5 you have, and then also discuss the structure of the hearing
6 beginning next week and also some timing questions.

7 You asked, I think, Your Honor, how many and which
8 parties rejected the plan or objected to the plan. Obviously,
9 we'll put evidence on on Tuesday or Wednesday relating to that,
10 but the answers are of the 1,432 votes, 1,368 accepted and 64
11 rejected the plan. That yields a 95.5 percent acceptance rate
12 for the non-junior secured noteholder claims which is quite
13 remarkable given where we started.

14 THE COURT: Other than the class in which the JSNs
15 are, did any class reject?

16 MR. LEE: There was -- of the 148 classes, there was
17 one borrower subclass in which there were two creditors total,
18 and it's not entirely clear to me and I'll resolve this before
19 we get up in front of you on Tuesday, whether or not that was a
20 misclassified claim. It appears that it's a claim against a
21 holding company at which the borrower has no relation
22 whatsoever. So we'll try and clear that up before we start the
23 trial.

24 With respect to the sixty-four rejecting parties, they
25 fall into five buckets and, in fact, I think something close to

1 half of those are resolved. There were nine securities
2 underwriter claims which will have been resolved by the
3 judgment reduction provision in the plan. Twenty of the
4 estates that were parties to the DOJ/AG settlement voted
5 against the plan. Those claims will be resolved as part of the
6 government carve-out that's going to be contained in the plan
7 and there was, I think, one taxing authority claim that's also
8 being resolved in the plan.

9 So if Your Honor recalls, the DOJ hasn't objected and
10 we've been working on appropriate carve-out language and also
11 language to deal with the post-effective date obligations of
12 the liquidating trust to effectively complete the exercise
13 required under the consent order. Though the twenty estates
14 effectively filed what was, in effect, a prophylactic objection
15 but that will be resolved because all of the funds will be
16 escrowed as part of the plan and we're working with the DOJ and
17 I think all signs are that we are close to or have resolved
18 that.

19 There are nineteen borrower claims. Those are
20 exclusively estate claims against ResCap or its subsidiaries.
21 Those claims arise out of servicing or foreclosures. There are
22 no allegations against AFI. To the extent to which there were
23 any claims, they would be entirely derivative of the claims
24 that the estate has.

25 And then we have seven other creditors. I describe

1 them as miscellaneous; none of whom have articulated a claim
2 against AFI and two of which have raised issues with respect to
3 the third-party release. One is Impac, who I think you heard
4 from last time. They're being actually sued by Ally as opposed
5 to the other way around, for breaches of reps and warranties
6 for loans that were sold by Impac to one of the Ally entities.

7 And I think that we'll address this if not today, then
8 tomorrow with respect to ResCap, we are going to assume and
9 assign the Impac contracts and the proposal will be that we
10 escrow a number in excess of the 2.5 million dollars that they
11 set forth in their objection as to their cure claim. So
12 whether that resolves their third-party release or not, I don't
13 know; maybe Mr. Eckstein might have more information than I do.

14 The other creditor is Wachovia, but that relates to
15 the deposit account that we closed within a month of the filing
16 of the bankruptcy. That's the so-called closed deposit account
17 objection. And as I understand it, what we're arguing over is
18 the 900,000 dollars in monitoring fees that Wachovia's counsel
19 has spent with respect to this bankruptcy and respect to the
20 closed bank account. I'll address that further at
21 confirmation, Your Honor.

22 So I think that actually answers all of your questions
23 with respect to that. I think that there were -- sorry, Your
24 Honor, there are sixteen creditors that did not vote or were
25 ineligible to vote on the plan but did file an objection. I

1 think I've addressed those with respect to the securities
2 claimants. I think it was Oracle, which is in the process of
3 being resolved, Freddie Mac, which has been resolved and Wendy
4 Alison Nora which I believe has now been resolved as well.

5 That leaves two creditors; Universal Restoration
6 Services --

7 THE COURT: Let me just stop you for a minute.

8 MR. LEE: Yes.

9 THE COURT: With respect to Ms. Nora, I tried to
10 follow that over the last day or so. As I understand, your
11 office has been authorized to file a withdrawal of her
12 disqualification motion; has that occurred yet? Because if it
13 hasn't, we're going forward tomorrow.

14 MR. LEE: Let me turn that to Mr. Eckstein.

15 THE COURT: Mr. Eckstein?

16 MR. ECKSTEIN: Your Honor, Kenneth Eckstein of Kramer
17 Levin.

18 My understanding is that the settlement with Ms. Nora
19 is finalized.

20 THE COURT: I'm not so worried about the settlement.
21 I understood that there was going to be a separate document
22 filed that expressly withdrew her disqualification motion. I
23 won't go forward unless it's -- you know, without deciding that
24 motion if it's still on file.

25 MR. ECKSTEIN: I will need to, after the conference is

1 concluded --

2 THE COURT: Okay.

3 MR. ECKSTEIN: -- confer with Ms. Frejka of my office
4 who is really handling that.

5 THE COURT: Okay. That's fine.

6 MR. ECKSTEIN: And we will endeavor to have that
7 withdrawn before the end of the day, if that can be done.

8 THE COURT: Okay.

9 MR. ECKSTEIN: But I believe that, at this point,
10 should be mechanical because I know the settlement is
11 completed.

12 THE COURT: Mechanical or not, if there's a withdrawal
13 of the motion filed, that's fine. If there's not, that motion
14 goes forward tomorrow.

15 MR. ECKSTEIN: I appreciate that, Your Honor.

16 THE COURT: Okay.

17 MR. LEE: So I think, Your Honor, that left with me
18 two creditors; one is Universal Restoration Hardware -- I'm
19 sorry, Universal Restoration Services which is a dispute over
20 an escrow and whether it's property of the estate. I think
21 that's set for hearing and ultimately the property either
22 belongs to them or not; I'm not sure that's a confirmation
23 objection.

24 And then the last one is the Wells Fargo objection and
25 the -- which we'll obviously address at confirmation.

1 I think the second question Your Honor asked me was
2 which borrower or class action claims will require bankruptcy
3 court approval and which will be resolved in the home court. I
4 think I can either do this by providing Your Honor with a chart
5 or just basically reading through the --

6 THE COURT: Sure, why don't you just give me a copy?
7 Big chart.

8 MR. LEE: My apologies.

9 THE COURT: No, that's okay.

10 MR. KERR: May I approach, Your Honor?

11 THE COURT: Absolutely. Thank you, Mr. Kerr.

12 MR. LEE: Your Honor, what we've endeavored to do with
13 respect to this chart is to provide information on the class
14 actions, the settlement amounts, whether bankruptcy court
15 approval is required or not and the procedure in the state or
16 home court. Unless Your Honor wants me to go through it, I
17 think that should answer Your Honor's questions.

18 THE COURT: You don't need to go through each of them
19 but with respect to those that you've indicated require
20 bankruptcy court approval, approximately when do you
21 anticipate -- I see some of them you've filed motions already.
22 I don't know whether you're going to bring them all on at the
23 same time or whether these are going to come over a period of
24 time.

25 MR. LEE: Yes, some of these will come over a period

1 of time but with respect to the first one, Your Honor, which is
2 Kessler --

3 THE COURT: Yes.

4 MR. LEE: -- we intend to take that up in connection
5 with the confirmation hearing.

6 THE COURT: All right. Okay. That's helpful. Thank
7 you.

8 MR. LEE: Yes, and obviously New Jersey Carpenters is
9 part of the confirmation hearing, too, as part of the final
10 approval process.

11 THE COURT: Right. And that Judge Baer has approved.

12 MR. LEE: That's correct, Your Honor.

13 The next question you asked was of the borrower class
14 action claims that have been resolved, do any of the
15 settlements leave behind codefendants that have filed claims
16 for indemnity or contribution against the debtors, and I think
17 I answered that question correctly with respect to PNC Bank but
18 that claim has been withdrawn by PNC.

19 And then relatedly, the -- I think you asked me about
20 the Rothstein case, as well. That doesn't resolve the claims
21 against Balboa Insurance which is a codefendant in that case.
22 However, Balboa did not file a claim in this proceeding which
23 is, I think, what I indicated last time.

24 THE COURT: Yes, thank you.

25 MR. LEE: And then the last question I think that Your

1 Honor posed was does the settlement agreement with the FHFA
2 incorporate the same judgment reduction language in the plan,
3 and the answer was no, which I think was the answer I gave last
4 time. And the AFI clarified that the settlement agreement with
5 the FHFA provides that the case has or will be dismissed. In
6 fact, it may have been dismissed. I'm not entirely sure. I
7 think it's subject to the final documentation.

8 THE COURT: Okay. But the -- I guess here's the
9 question: The codefendants in that case, at least the
10 underwriter codefendants had asserted claims, contribution or
11 indemnity, and have those claims been withdrawn or resolved?

12 MR. LEE: I'm going to have to defer to Mr. Schrock,
13 Your Honor.

14 THE COURT: Well, I see Mr. Glenn coming up as well,
15 who is counsel for FHFA. Mr. Schrock?

16 MR. ECKSTEIN: Your Honor, while we're waiting, I have
17 received confirmation that your chambers has been advised that
18 the withdrawal motion is in the queue; it should hit shortly.

19 THE COURT: As long as it hits.

20 MR. ECKSTEIN: I understand.

21 THE COURT: Mr. Schrock?

22 MR. SCHROCK: Good afternoon, Your Honor. Ray Schrock
23 of Kirkland & Ellis on behalf of Ally.

24 Mr. Glenn of Kasowitz is checking with his office on
25 the precise procedure, but I believe those issues will be

1 resolved. We're just checking on the mechanics for it.

2 THE COURT: Okay. All right. Thank you very much,
3 Mr. Schrock.

4 MR. SCHROCK: Thank you.

5 THE COURT: Mr. Lee?

6 MR. LEE: Your Honor, obviously there was a lot of
7 paper filed. If there are any other questions you have, I'm
8 more than happy to answer them now. If not, I'm happy to
9 discuss the structure of the hearings next week and some timing
10 questions.

11 THE COURT: You'll forgive me if I've been preoccupied
12 with something I'm trying to get done.

13 MR. LEE: I'm perfectly happy to do my opening now and
14 summarize what you need to read, Your Honor.

15 THE COURT: Let me -- I'm going to raise a couple of
16 issues or a couple of procedural thoughts that I have but I
17 won't actually order it. I'll wait to hear whether something
18 different is being proposed, okay? So these are some notes
19 that I wrote to myself that because this is a little unusual,
20 because it's a combined hearing on confirmation and the Phase
21 II trial of the adversary proceeding, I know who the counsel
22 are basically in the adversary. I don't know who all plans to
23 participate in connection with confirmation. But my thought is
24 that any counsel intending to cross-examine any witness for
25 whom direct testimony has been filed shall file a notice to

1 that effect on ECF by tomorrow at noon with an estimate of the
2 amount of time you expect to take on cross-examination. I
3 think everybody ought to know ahead of time.

4 I know as to counsel on the adversary proceeding, I
5 believe that's been done pretty orderly. You've already
6 exchanged information about cross-examination and estimates of
7 time, but there are a lot of other parties potentially involved
8 in connection with confirmation and I think everyone ought to
9 know ahead of time that the direct testimony's been filed,
10 people have had an opportunity to review it and everybody,
11 including -- especially me, wants to know by tomorrow at noon
12 who is intending to cross-examine and an estimate of the time.

13 I will not permit repetitive cross-examination and
14 during the proponent's case, the plan proponent's case, cross-
15 examination will start with counsel for the JSNs and UMB first
16 and then proceed to other counsel who have identified by
17 tomorrow at noon that they intend to cross-examine. They can
18 change their mind, of course, and not do it but --

19 The only other thing I wanted to raise now is I expect
20 to rule on the two motions in limine at the start of the
21 hearing on Tuesday without hearing argument which is my usual
22 practice with motions in limine.

23 MR. LEE: Thank you, Your Honor.

24 THE COURT: Okay.

25 MR. LEE: Just with respect --

1 THE COURT: But if there's anything -- I'll let you
2 all talk. If anything -- if you've all discussed something a
3 little different than what I've described, well, I'll hear it
4 and decide whether to alter what I've already said.

5 MR. LEE: So I think the only difference with respect
6 to what Your Honor said relates to the JSNs. I believe that
7 we've given them until Monday to provide that information.

8 THE COURT: Okay. With respect to their estimate
9 of --

10 MR. LEE: Cross-examination.

11 THE COURT: Okay.

12 MR. LEE: Yes.

13 THE COURT: But everybody knows that --

14 MR. LEE: Yeah.

15 THE COURT: -- I'm less concerned; I mean, I want them
16 to do their cross-examination first before cross-examination is
17 opened up to others. I'm perfectly fine with your agreement
18 that they'll notify by Monday.

19 MR. LEE: Yeah.

20 THE COURT: But everybody else that you've had an
21 opportunity to see the direct; if you intend to cross, file it
22 by noon tomorrow, put an estimate on the amount of time.

23 MR. LEE: Thank you, Your Honor. So --

24 THE COURT: I take it that nothing you've discussed
25 would alter -- would cause me to change that direction?

1 MR. LEE: No, Your Honor.

2 THE COURT: Okay. Good.

3 MR. LEE: So obviously, Your Honor, the proponents
4 have significantly more to do with respect to this trial than
5 argue over post-petition interests. It's an interesting
6 exercise but we have to get the plan confirmed. So there is a
7 question and perhaps even a suggestion that we discuss with
8 Your Honor a timed trial. We have six days in total. We
9 anticipate that we will need to do very lengthy openings,
10 perhaps as much as three hours from the prospective of the
11 proponents. We have to take you through a mountain of paper.
12 We have to take you through 1129. We have to take you through
13 the plan, the plan objections, the resolution of the
14 objections, the evidence that we're putting in which is quite
15 voluminous and the settlements. And we think that, quite
16 frankly, that frames the coproponents' plan confirmation case
17 and if we do that, it will put everything into context.

18 So with that, if we're assuming that we have thirty-
19 six hours, you know, our proposal would have been there are
20 three settlements that we need to address as part of the
21 confirmation process in addition to everything else; that's the
22 Kessler, which I think I mentioned, the NCUAB 9019 and the FHFA
23 settlement, all of which tie to confirmation.

24 What we were planning to do, Your Honor, was to leave
25 those until all of the evidence has come in with respect to

1 confirmation and with respect to any Phase II issues and then
2 reserve the last half a day of the six days to address those.
3 I doubt we're going to need it but we want to just effectively
4 have those three hours. It's obviously critical that we get
5 them done as part of the confirmation process.

6 So what that leaves us with, Your Honor, is I think
7 thirty-three hours. Given the burden on the plan proponents,
8 our proposal will be that the plan proponents have nineteen
9 hours. The JSNs, Wells, the ad hoc group or whatever have
10 eleven, and that the remaining objections -- the remaining
11 objectors of which there's -- well, a diminishing number to the
12 point of less than a handful, get three hours to address
13 whatever objections they have. That was the first point that I
14 wanted to raise and I think that stems from the question as to
15 whether Your Honor actually expects a timed trial or not.

16 THE COURT: Okay. Sure, okay.

17 MR. LEE: And in answer to what would have been the
18 obvious question, which is have you raised that with the JSNs
19 and the other objecting parties, the answer is we have raised
20 it with them. They're considering it. They neither agree nor
21 disagree. I'm simply making the observation, Your Honor, that
22 we obviously have significantly more to do than they do with
23 respect to this.

24 THE COURT: Well, let me -- and I do want to hear -- I
25 don't -- Mr. Uzzi or who is going to speak for the JSNs today,

1 obviously while I set aside the six days, there was a brief
2 discussion I think on the record at the last hearing that if we
3 don't finish in the six days when the next two days that would
4 be available; that's not an invitation to extend the length of
5 the hearing. As many of you know, my practice has been to do
6 timed trials and allocate the time but let people know well in
7 advance so that they can plan accordingly.

8 The difficulty I have here is and is the reason that I
9 haven't specified how many hours you get, how many hours the
10 other side get, is it's not a two-party fight at this point and
11 that isn't intended as an invitation for anybody to drag this
12 out because I won't -- that I won't put up with, okay? I have
13 no qualms whatsoever about cutting off a line of questioning
14 that I don't think is meaningful to me as the decision-maker or
15 relevant to the issues or what -- and I have no hesitancy about
16 doing that. But I'm very mindful of the fact there are a lot
17 of additional parties who weren't in the -- for that Phase I
18 trial, you all finished ahead of schedule, considerably ahead
19 of schedule.

20 I allocated time based on the number of issues, the
21 number of witnesses and both sides conducted that trial very
22 efficiently. There had been some expression that that wasn't
23 enough time -- before the trial -- that that wasn't enough time
24 that I was allocating and it finished two or three days before
25 the allotted time that had been used.

1 So I hope that the confirmation hearing/Phase II trial
2 will be conducted as efficiently. The direct has been filed.
3 Yes, the debtors have considerably more ground to cover,
4 although I would note the JSNs have plan confirmation issues as
5 well, but not just the Phase II trial issues.

6 Let me hear from -- does someone want to speak for the
7 JSNs?

8 MR. COHEN: Good afternoon, Your Honor. David Cohen,
9 Milbank, Tweed --

10 THE COURT: I couldn't see you sitting back there.

11 MR. COHEN: Ah.

12 THE COURT: That's why I pointed to Mr. Uzzi but --

13 MR. COHEN: David Cohen, Milbank, Tweed, Hadley &
14 McCloy on behalf of the ad hoc group of JSN noteholders and the
15 notes trustee.

16 We got the proposal that Mr. Lee just talked about
17 literally a half an hour before we came to court and --

18 THE COURT: I don't expect you to give me an answer.

19 MR. COHEN: Right. We had not considered -- we heard
20 your comments at the last status conference suggesting I think
21 it was December 5 and 6th were available dates if we didn't
22 finish; we share your view that we would like to do this trial
23 as efficiently as possible. We have to figure out our timing
24 on cross-examinations which as Mr. Lee noted or Mr. Kerr, is
25 due on Monday.

1 So while we will give the best estimates, I don't
2 think at this point we can tell you -- I certainly don't think
3 eleven hours is going to be sufficient and we can talk about
4 different allocation, given the number of witnesses that we
5 intend to call and that they intend to call.

6 THE COURT: The JSNs didn't think the time I allocated
7 for the Phase I trial was enough and then you went ahead and
8 finished days ahead of time.

9 MR. COHEN: And if we can finish ahead of time, we'll
10 absolutely do that here, as well. But I think these are
11 important issues. We're going to work with the debtors on it.
12 As you noted, we also have a plan objection that we need to
13 cover, as well. So we did get the proposal. We'll continue to
14 work with the debtors and see if we can come up with the right
15 answer.

16 THE COURT: How long an opening do you anticipate?
17 Are you going to be the lead lawyer?

18 MR. COHEN: I am going to be the lead. I would think
19 ninety minutes would be sufficient, same as Phase I.

20 THE COURT: Okay. All right. Does somebody else want
21 to be heard on time? Mr. Eckstein?

22 MR. ECKSTEIN: Your Honor, Kenneth Eckstein, Kramer
23 Levin.

24 I can appreciate as a practical matter Mr. Cohen needs
25 to digest this and to speak with his clients. We think that

1 there's a lot of merit to this for two separate reasons; one is
2 particularly having had the experience of the Phase I trial. I
3 think as a judicial economy matter, we all actually can figure
4 out ways to make it work and I think that the reality is that
5 while there's a lot to cover, based upon the scope of the
6 objection from the JSNs, the reality is that most of the
7 witnesses, most of the declarations, we're not expecting are
8 going to be the subject of a lot of cross-examination. There
9 are certain witnesses who will be, but in terms of the volume,
10 this probably is a somewhat more discrete trial than the Phase
11 I trial and even though the openings will be comprehensive, the
12 rest of this we would expect can go in -- certainly many of
13 them can go in probably without a lot of time.

14 The other point that I think is significant is just as
15 a practical matter, Your Honor knows that there is a deadline
16 right now in the plan support agreements. Whether we'll be
17 able to meet that deadline or not remains to be seen but I
18 think Your Honor appreciates everybody's working very hard to
19 meet those deadlines. We do have Thanksgiving. We recognize
20 Your Honor may want findings of facts and --

21 THE COURT: Not may, will.

22 MR. ECKSTEIN: Will; I think I heard that -- will want
23 findings of fact submitted. I would not be surprised if the
24 Court and parties want a closing. And so there is going to be
25 work to be done after November 26th and the reality is that I

1 think there's a lot of reason to try to do everything we can to
2 use the six days to get this done and I -- hopefully after the
3 JSNs think about it a little bit, they'll realize that we, in
4 fact, can get it done. And if there's a little bit of juggling
5 we need to do, we'll do it but I think I want to encourage the
6 fact that we try to make that work.

7 THE COURT: Well, I want to encourage that it be made
8 to work, as well. We'll see.

9 Mr. Uzzi, do you want to be heard?

10 MR. UZZI: Yes, for the record, Gerard Uzzi from
11 Milbank.

12 I think the last issue -- what's a little confusing to
13 me is what we're trying to accomplish in the six days. And in
14 the Phase I --

15 THE COURT: To try and get everything done, Mr. Uzzi;
16 no mistake about it.

17 MR. UZZI: Well, the question is if you want to -- if
18 whether we're coming back after the close of the record with --
19 after findings of facts and conclusions of law --

20 THE COURT: That's likely to happen. I mean that's
21 what happened after the Phase I trial. The reality is, I don't
22 know whether there's going to be any more issues about
23 deposition designations, et cetera and, I mean, I think what
24 happened with the Phase I trial from my standpoint was
25 efficient. I got the proposed findings and scheduled argument

1 pretty soon thereafter and that's likely to happen here. I'm
2 not expecting you're going to close at the close of the
3 evidence; let's put it that way.

4 MR. UZZI: Oh, well, I think that's meaningful in our
5 discussions, Your Honor.

6 THE COURT: Okay.

7 MR. UZZI: Because as you know, we recognize the
8 debtors have to go through the elements of 1129 and a lot of
9 that stuff we're just --

10 THE COURT: Why don't you just stipulate to all of it.

11 MR. UZZI: Well, I don't think we've taken issue with
12 most of them. So it's up to them as to --

13 THE COURT: Well, sit down --

14 MR. UZZI: -- how they want to --

15 THE COURT: -- sit down with them after we finish
16 today and see what you can stipulate to. You're not the only
17 one who has to agree.

18 MR. UZZI: Well, I think that's the issue. It's not
19 our issue. I think it's more their issue as to the record they
20 want to present to you with respect to explaining the plan and
21 things like that.

22 THE COURT: That's certainly true and there may be
23 other objectors and, I mean, I'll hear from some of them now
24 but the reality is that the JSNs have done whatever they can to
25 stop this plan in its tracks. That's the reality, okay?

1 That's your right to try and do that, okay?

2 So if they can reach stipulations with the JSNs, it
3 may expedite -- and yes, you know, for Phase II the pre-trial
4 order starts with stipulations but that deals with Phase II.
5 That doesn't deal with confirmation.

6 So you may well be able -- pick your fights that you
7 want to fight. I understand you have those. But let's not
8 drag out the necessity of a prolonged record on things as to
9 which you're not going to contest and let them know ahead of
10 time. So hopefully it can get truncated.

11 MR. UZZI: Well, we tried to do that in our plan
12 objection, Your Honor. We've actually offered denial on the
13 issues in the plan objection. You know, we're happy to talk to
14 them some more --

15 THE COURT: Okay.

16 MR. UZZI: -- about making this as efficient as we
17 can.

18 THE COURT: I don't -- look, as I said at the end of
19 the Phase I trial and I said it again now, your clients and UMB
20 have fought hard on a lot of issues, but done it very
21 efficiently. I'm not -- I don't have a complaint about that.
22 It was all done very professionally. And I fully expect that's
23 going to happen again.

24 I'm just encouraging -- I've been through this very,
25 very lengthy pre-trial order for Phase II, but I have -- maybe

1 there's something that's been filed with respect to
2 confirmation that I haven't seen yet that includes
3 stipulations.

4 But since you represent the principal opposing party,
5 to the extent you can resolve as many issues as possible, then
6 you can all focus your efforts on those that are really -- that
7 you're really fighting about.

8 MR. UZZI: I think we -- understood, Your Honor.

9 THE COURT: Right.

10 MR. UZZI: I think we did that in our plan objection.

11 THE COURT: Okay.

12 MR. UZZI: But understood.

13 THE COURT: Well, that's your plan objection. What
14 I'm asking now is sit down and stipulate to what you can
15 stipulate to so we don't even have to deal with a lot of that
16 stuff. Okay?

17 MR. UZZI: Yes.

18 THE COURT: All right. You want to be heard? Come on
19 up.

20 MR. LEBIODA: Good afternoon, Your Honor. Nathan
21 Lebioda from Winston & Strawn on behalf of Wachovia, Wachovia
22 Bank of Delaware now succeeded by Wells Fargo.

23 The plan proponent's schedule is certainly amenable to
24 us. Our objection is quite limited. It's not objecting to
25 confirmation, per se. It's limited to the extent of the

1 release of the third-party non-debtor AFI.

2 We're trying to work through a stipulation of facts
3 with the proponents currently. We're hopeful that that
4 stipulation of facts will be agreed to and put on the record
5 prior to the hearing.

6 Two of the key components that we're trying to get on
7 the record prior to that hearing are --

8 THE COURT: If you're going to put the stipulation
9 in -- I don't know when you say put it on the record, do it in
10 writing.

11 MR. LEBIODA: Right. Yes. Yeah, we exchanged
12 documents with the proponents and we're hoping to get that
13 done.

14 THE COURT: Okay.

15 MR. LEBIODA: Two key documents that we're wanting on
16 the record are the deposit agreement, as well as the amendment
17 thereto. We're hoping we can work that out through the
18 stipulation.

19 If not, we'll --

20 THE COURT: I can't believe you're having a dispute
21 about the admissibility of a deposit agreement. That isn't
22 going to happen.

23 MR. LEBIODA: If not, we will just like to reserve a
24 few minutes of time to get that on the record and possibility
25 15 minutes of cross-examination.

1 THE COURT: Well, you keep saying get it on the
2 record. Negotiate a stipulation. Put it in writing. If you
3 can file it before the hearing, please do.

4 You know, through the Figit (ph.) trial, the JSN Phase
5 I trial, there have been almost no evidentiary issues about
6 exhibits. I mean, it just -- and I don't anticipate there are
7 going to be any here. Okay, but --

8 MR. LEBIODA: All right.

9 THE COURT: Okay.

10 MR. LEBIODA: That's all I need --

11 THE COURT: Thank you.

12 MR. LEBIODA: -- Your Honor.

13 THE COURT: Anybody else want to be heard? You,
14 Mr. Siegel.

15 MR. SIEGEL: Your Honor, Glenn Siegel of Morgan Lewis
16 on behalf of Bank of New York.

17 THE COURT: Have you gotten used to saying that yet?

18 MR. SIEGEL: This is the first time I've actually said
19 it in the court.

20 As has been our previous practice in this case, I'm
21 speaking on behalf of all the RNBS trustees unless
22 contradicted, but -- it's the best I can do, right?

23 THE COURT: They're all getting up in the back. I
24 don't --

25 MR. SIEGEL: Yeah, I bet.

1 But this is in keeping with your admonition to try and
2 create some efficiency here. The trustees, as you may know,
3 are in -- save for one, are all in a bunch of different cities.

4 We've submitted declarations as of this point in time,
5 at least based on our own judgment. We're not quite sure why
6 anybody needs to cross us. We haven't seen anything.

7 The -- we have --

8 THE COURT: Declarants need to be here and available
9 for cross-examination.

10 MR. SIEGEL: Your Honor, I appreciate what you're
11 saying. I do want to at least advise you that we've spoken to
12 Mr. Cohen, who has undertaken to tell us by tomorrow whether or
13 not --

14 THE COURT: Good.

15 MR. SIEGEL: -- he intends to cross us. But of
16 course, Your Honor, it's your expectation that the -- all the
17 declarants will be here. They will.

18 Then I would only ask that we be able to agree at
19 least as to what day they ought to be here, rather than have
20 them available for the entire trial.

21 THE COURT: But here's what I -- again, this comes
22 down to there are a lot of other potential parties-in-interest
23 for confirmation. What I would encourage you to do -- I've
24 said this before in the other two trials, I'm perfectly
25 amenable to take witnesses out of order where that is necessary

1 because of scheduling. Not just haphazardly, but if someone
2 has a true scheduling issue, talk with committee, the JSNs, the
3 Debtors' counsel and see if you can resolve the scheduling
4 issue.

5 It may be that your people are going to have to show
6 up here only to have everybody say, no questions. But what I
7 won't have is direct examine -- direct witness statement
8 offered, somebody say, I want to cross-examine, and not have a
9 witness here. I don't permit examination by telephone. Okay.

10 MR. SIEGEL: Understood.

11 THE COURT: Okay. Thank you very much, Mr. Siegel.
12 Anybody else want to be heard?

13 MR. LEE: If there's no one else, then --

14 THE COURT: Why don't you wait, Mr. Lee. Let's let
15 everybody else have their say.

16 MR. SCHAFFER: Your Honor, Eric Schaffer, Reed Smith
17 for Wells Fargo as collateral agent.

18 Two housekeeping points; first, you know, we filed
19 objections that are not subsumed by Phase II. It's our
20 understanding that to extent we'd want to cross, we'll do it as
21 witnesses come up, that it's all going to be worked through
22 at -- in orderly fashion that way.

23 THE COURT: Yes, but to the extent that there are --
24 direct examination has been already submitted, already filed,
25 by tomorrow at noon you will indicate which witnesses you --

1 MR. SCHAFFER: Absolutely.

2 THE COURT: -- expect to cross-examine and an estimate
3 of the time.

4 MR. SCHAFFER: We --

5 THE COURT: I don't -- it's an estimate. I
6 understand.

7 MR. SCHAFFER: Absolutely.

8 THE COURT: Okay. That's fine.

9 MR. SCHAFFER: Second point; as the Court knows, we
10 have a right of indemnification for any claims that may be
11 asserted by the JSNs against Wells Fargo. The Debtor says that
12 the plan preserves our rights and that's a good thing.

13 UMB has said that it thinks our -- the amount of our
14 claims need to be dealt with in a separate estimation. It's
15 our understanding, and we just want to confirm, that consistent
16 with the Debtors' response any issues that go to the amount of
17 our claim are deferred until after confirmation. That's not
18 going to be part of what we're doing in confirmation.

19 THE COURT: Mr. Lee?

20 MR. LEE: Just give me one second, Your Honor. I just
21 want to make sure I understand.

22 THE COURT: Sure. Go ahead.

23 MR. LEE: That's absolutely correct, Your Honor.

24 Sorry, Gary Lee from Morrison & Foerster for the
25 Debtors. It's correct.

1 THE COURT: Okay. I assume you're satisfied with that
2 response?

3 MR. SCHAFFER: I am, Your Honor. Thank you.

4 THE COURT: Okay.

5 MR. LEE: Your Honor, I just have one more question
6 before I turn it over to Mr. Kerr.

7 THE COURT: Sure.

8 MR. LEE: In relation to -- I know Your Honor said
9 that you wanted post-trial findings of fact --

10 THE COURT: Yes.

11 MR. LEE: -- conclusions of law. My assumption is, is
12 that in relation to both Phase II and confirmation?

13 THE COURT: Yes. Well --

14 MR. LEE: It's do -- that's what I was trying to make
15 sure that we were oriented.

16 THE COURT: Okay. But absolutely with -- Phase II is
17 pretty well developed. I mean, it was developed first with the
18 statement of issues. It was -- we know what -- you'll see soon
19 what the outcome of Phase I is.

20 MR. LEE: Right.

21 THE COURT: I've gotten this joint pre-trial order
22 with respect to Phase II. The issues are well defined, well
23 developed.

24 The confirmation standards obviously are the
25 confirmation standards. You've got some plan objections.

1 I have a feeling, Mr. Lee, that when we get to the end
2 of the evidentiary hearing, it'll be pretty clear which
3 issues -- which factual and legal issues for confirmation you
4 need to address beyond what is covered by Phase II.

5 So I don't need a regurgitation of everything that's
6 being provided to me in support of confirmation again. I doubt
7 whether we're going to need another -- if there's any
8 confirmation brief, I think it's going to be narrow targeted
9 focused on the specific issues that are raised.

10 MR. LEE: Okay.

11 THE COURT: Okay. So I think when we finish the
12 evidence, raise again what issues you need to address. I'm not
13 looking to have another mountain of paper generated
14 unnecessarily. Okay?

15 I don't know if that's responsive to what you're
16 asking.

17 MR. LEE: No, perfectly. Thank you, Your Honor.

18 THE COURT: Okay.

19 MR. LEE: I'd like to turn it over to Mr. Kerr. All
20 right. Thank you.

21 THE COURT: Okay. Sure.

22 MR. KERR: Good afternoon, Your Honor. Chuck Kerr of
23 Morrison & Foerster on behalf of the Debtors.

24 Just a couple of housekeeping matters, Your Honor.

25 THE COURT: Sure.

1 MR. KERR: We have been working very well with the
2 JSNs and with the committee on trying to get things focused.
3 That being said, one of my statements to you about trying to be
4 very efficient got screwed up. And the reason that is, is I
5 was trying to do a single witness list and it didn't work out
6 that way in the PTL that you got.

7 So the parties have agreed to submit today a new form
8 of just the witness list that now updates and clarifies which
9 of the witnesses are. That'll end -- all of these witnesses
10 have had direct submitted or whatever, so it's just a question
11 of getting the paper right. That's all.

12 THE COURT: That's fine, Mr. Kerr.

13 MR. KERR: And that'll be submitted a little bit
14 later.

15 Your Honor, one question on exhibits. We have -- in
16 part because we have felt compelled to make sure our record's
17 complete on the proofs of claim, whenever we have a fairly
18 extensive witness -- I mean, exhibit list, normally we would be
19 delivering a truckload of paper to Your Honor tomorrow.

20 And what I would like to propose, subject to Your
21 Honor's suggestion, is that some of those exhibits I think are
22 not going to be controversial and we'd like to deliver them to
23 Your Honor in electronic form. And if you need them in paper,
24 we can obviously provide them in paper, but the categories I
25 was going to suggest of our exhibit list -- we have included

1 all the proofs of claim. There's 475 of them, Your Honor.
2 We'd like to -- I'm more than willing to give them in paper,
3 but I would suggest we provide them to you in electronic form.

4 There's court filings that we and other plan
5 proponents have identified. They're all on ECF. We would
6 provide those in electronic form.

7 And we've also included on our list, Your Honor, the
8 exhibits that were marked into evidence in Phase I. Again, we
9 would suggest that we just provide that in electronic form.

10 THE COURT: Those are sitting in there. Now I'm
11 pointing at chambers.

12 MR. KERR: Well, Your Honor, it's entirely what would
13 be useful for you. Again, we want to make this as --

14 THE COURT: But --

15 MR. KERR: -- efficient for you as we can.

16 THE COURT: I'm fine with what you suggest with this
17 proviso. Okay. I want to be sure that you have paper copies
18 of all of the exhibits in the courtroom so that if somebody
19 gets up and they say they want -- they start cross-examining a
20 witness about a proof of claim, I don't want to be scrambling
21 to look for an electronic copy of it.

22 MR. KERR: Your Honor, I'd make that commitment.

23 THE COURT: Okay.

24 MR. KERR: We will make sure that we have a copy --
25 and two copies if we need it -- of every exhibit here in the

1 courtroom. We have room upstairs as well.

2 So we'll make it -- if anybody has that issue, and I
3 make that -- but not to Your Honor, but to everybody who will
4 be at the hearing, if they need a document, we'll give them a
5 document.

6 THE COURT: That's fine.

7 MR. KERR: All right.

8 THE COURT: I'm running out of space to keep
9 documents.

10 MR. KERR: I realize that, Your Honor.

11 Despite that, Your Honor, we will have additional
12 exhibits that we are going to deliver in paper form --

13 THE COURT: Right.

14 MR. KERR: -- and they'll arrive at your doorstep
15 tomorrow.

16 Trying to see if I have any other housekeeping issues,
17 Your Honor. I don't think I do. So if you have any questions
18 about procedure or how you expect us to do this, please, I can
19 try to answer them, but otherwise, I'll sit down.

20 THE COURT: I always hesitate to admit this, but I
21 have been preoccupied with what you're all waiting for. Maybe
22 some of you are not waiting for it. But let me see whether I
23 have anything else.

24 So I've heard from Mr. Lee and Mr. Cohen on an
25 estimate of how much time they anticipate using for opening

1 statements. Is anybody else here going to make an opening
2 statement and do I have an estimate of approximately how much
3 time that will take?

4 Mr. Schrock?

5 MR. SCHROCK: Yes, Your Honor. Ray Schrock of
6 Kirkland & Ellis.

7 I plan to make an opening statement. I would expect
8 twenty minutes probably would be fine.

9 THE COURT: Okay. All right.

10 MR. ECKSTEIN: Your Honor, I think Mr. Lee had
11 indicated he and I are going to split up the proponents'
12 opening.

13 THE COURT: Okay. All right. Anybody else in the
14 courtroom intending to make an opening? Okay.

15 MR. KERR: Your Honor, one other housekeeping matter.
16 The JSNs have indicated on their exhibit list that they want to
17 call some adverse witnesses. They are the witnesses that --
18 some of them are witnesses we are calling. We'll do it all at
19 one time. We'll call the witness. They'll cross-examine them.

20 THE COURT: Yeah. I think I've said this before. It
21 may not have been at this -- in connection with this upcoming
22 hearing, but it's a bench trial. It's most efficient if
23 everybody -- whether something is within the scope of the
24 direct or not, come on, just do whatever examination you're
25 going to do so we can get the witnesses done, so nobody has to

1 recall them. And I assume you'll all agree on how to do that.

2 MR. KERR: We will, Your Honor. We agree 100 percent.

3 THE COURT: Okay.

4 MR. COHEN: And that's fine with the JSN as well.

5 THE COURT: Thanks, Mr. Cohen. Okay.

6 All right. Anybody else have any other substantive or
7 logistical issues that they want to raise?

8 Let me just look back at some notes here.

9 MR. ECKSTEIN: We withdraw that as an exhibit now.

10 THE COURT: Okay.

11 MR. RECKLER: Good afternoon, Your Honor, William
12 Reckler of Latham & Watkins on behalf of Deutsche Bank
13 Structured Products and a variety of other Deutsche Bank
14 entities.

15 The plan proponents' response that was filed the other
16 day appears to create some confusion about what my clients are
17 actually seeking. I'm happy to address that now or later at
18 Your Honor's preference.

19 THE COURT: I haven't read what they filed.

20 MR. RECKLER: Okay.

21 THE COURT: So --

22 MR. RECKLER: Well, perhaps I can summarize the issue
23 very quickly then.

24 THE COURT: Okay.

25 MR. RECKLER: What they filed creates the impression

1 that my clients are asking the Court to decide Deutsche
2 Bank's -- whether it's entitled to a judgment reduction credit
3 in the investment related securities litigation. It gives the
4 impression that we're asking you to decide that now.

5 That's absolutely not what we're seeking, Your Honor.
6 All we're asking for is clarification of the plan and the
7 confirmation order do not affect the judgment reduction
8 analysis that will happen in those other cases at a subsequent
9 point in time.

10 We believe that the plan as drafted it creates an
11 ambiguity -- or potentially creates an ambiguity in that it
12 specifies that the defendant's right to seek a judgment
13 reduction credit where one of the allied released parties co-
14 defendant is a party --

15 THE COURT: I'm sorry. I missed the last part
16 somebody coughed.

17 MR. RECKLER: It specifies that the right to seek a
18 judgment reduction credit is preserved whereupon the allied
19 released parties is a co-defendant in the other litigation.

20 It's silent with respect to what happens when only the
21 Debtors are co-parties in the other litigation.

22 THE COURT: The Debtors are not co-parties in the
23 other litigation.

24 MR. RECKLER: The relevance --

25 THE COURT: They may have been, but --

1 MR. RECKLER: Correct, or when they may have been
2 parties in other litigation. When they are released. There's
3 that ambiguity. There's silence in article 9 --

4 THE COURT: Have you tried to talk with Mr. Lee about
5 this?

6 MR. RECKLER: We have. We've reached out to
7 Creditors' counsel. We've reached out to Debtors' counsel.
8 We've actually reached out directly to the plaintiffs in those
9 other cases. And frankly, it seems like nobody is very
10 interested in talking to us.

11 THE COURT: Really?

12 MR. RECKLER: Yeah. I mean, all we're seeking, Your
13 Honor, is clarification of the confirmation order.

14 THE COURT: Keep talking to them and see if you can
15 get it resolved. Okay?

16 MR. RECKLER: We're certainly trying.

17 THE COURT: You're not going to be --

18 MR. RECKLER: We're hopeful that we can.

19 THE COURT: I'm not precluding you right now from
20 anything, okay. But I just -- keep talking to them and see if
21 you can get it resolved.

22 MR. RECKLER: Okay. We'd very much like to.

23 THE COURT: Okay. Everybody's had a lot on their
24 plate.

25 MR. RECKLER: Yeah. Understood. Thank you, Your

1 Honor.

2 THE COURT: Okay. Thank you very much.

3 MR. SCHAFFER: Your Honor, Eric Schaffer, Wells Fargo
4 as collateral agent.

5 THE COURT: It's hard to keep the roles of Wells Fargo
6 straight, but --

7 MR. SCHAFFER: Well, we shouldn't allow any more bank
8 mergers.

9 Your Honor, I assume that with regard to the
10 objections that we and others have submitted that there will be
11 oral argument after the record is closed. I'm just trying to
12 figure out for timing purposes would that be --

13 THE COURT: I thought I said that before, but -- so
14 we're going to close the evidence. I'm going to ask for
15 proposed findings of fact and conclusions of law.

16 At the end of the JSN Phase I trial, I was asked would
17 I prefer conclusions of law in the numbered paragraph form or
18 in brief form. I left it to the parties.

19 The brief form was quite helpful. So if that's
20 what -- we'll all discuss it. And I assume that's what you'll
21 want to do. It was perfectly fine the way I got them.

22 I got all that. I read all that. We had closing
23 argument. I anticipate that's what's going to happen again.
24 There wasn't a large gap between the post-trial filings and
25 closing argument.

1 There will not be a long gap between the post-trial
2 filings and they'll be due pretty expeditiously. I assume
3 we're going to have a daily transcript available again. People
4 are not going to have a lot of time to get their post-trial
5 filings in. So have your folks working on it as the trial is
6 going along.

7 I left it -- I asked the question at the close of the
8 evidence on what schedule the JSNs -- and Wells Fargo was in
9 that too -- proposed. The schedule they proposed was
10 reasonable. Everybody lived with the schedule. And so that's
11 going to happen again.

12 Does that answer your question?

13 MR. SCHAFFER: It does and I thank you.

14 THE COURT: Okay. Anybody else?

15 Mr. Lee, what's going to happen tomorrow? Do you -- I
16 mean, I got this -- what contested matters do I have for
17 tomorrow, do you know?

18 MR. LEE: I haven't looked at the calendar, Your
19 Honor.

20 THE COURT: You have no idea either?

21 MR. LEE: No, Your Honor.

22 THE COURT: Does anybody here have any idea what's
23 contested for tomorrow?

24 MR. LEE: I just wanted to get through today.

25 What's that? It is the -- Impac's on, although you

1 are not -- I don't think it's an evidentiary hearing anymore.
2 It's now just a scheduling conference and I think I was close
3 to describing what the outcome of that is. I'm not sure what
4 else there is.

5 UNKNOWN SPEAKER: The parties are off on Lenore.

6 THE COURT: Lenore is off.

7 MR. LEE: Syncora is off.

8 THE COURT: Syncora's off.

9 MR. LEE: Okay.

10 MR. MANNAL: Well, it --

11 MR. LEE: So we've got maybe --

12 THE COURT: No. Mr. Mannal balked at Syncora being
13 off.

14 MR. MANNAL: Syncora has been resolved, Your Honor.

15 THE COURT: Identify yourself.

16 MR. MANNAL: Doug Mannal on behalf of the creditor's
17 committee, Your Honor, and Kramer Levin.

18 Syncora will go forward tomorrow to the extent we
19 can --

20 THE COURT: Okay.

21 MR. MANNAL: -- finalize documentation. And if not,
22 it'll be adjourned.

23 THE COURT: Okay. All right. I see other counsel
24 that want to be heard.

25 Hopefully by now you all realize whenever I have a

1 ResCap hearing, I think I'm prepared on everything and that
2 isn't true for tomorrow. And that's because I'm trying to get
3 everything done that needs to get done.

4 Okay. Go ahead.

5 MR. GRAHAM: Yes. Good afternoon, Your Honor. Chris
6 Graham from McKenna Long & Aldridge, together with my partner
7 Alan Kaufman, for Impac Funding Corporation. We're on for
8 tomorrow.

9 THE COURT: What is it I'm being asked to decide
10 tomorrow?

11 MR. GRAHAM: Whether the Debtor can assume and
12 assign --

13 THE COURT: I thought they just said they were going
14 to do that.

15 MR. GRAHAM: I believe that that is their intention,
16 Your Honor.

17 THE COURT: Does that resolve the issue?

18 MR. GRAHAM: We're very -- no, no, it doesn't. There
19 are some other issues, but I think we are very close to
20 resolving those issues and we may be able to stip to them. And
21 we're trying -- we've been trying.

22 THE COURT: Okay.

23 MR. GRAHAM: Mr. Mannal and I were negotiating late at
24 night at the Bedford Hills train station. We're trying --
25 turns out we're neighbors. We've been trying to resolve these

1 issues -- all of the issues. And we're trying to, but
2 otherwise, we'll be here tomorrow. There will not be an
3 evidentiary hearing.

4 THE COURT: Okay. That I --

5 MR. GRAHAM: All right.

6 THE COURT: -- was told I think last week --

7 MR. GRAHAM: Right.

8 THE COURT: -- that this didn't have to go forward as
9 an evidentiary hearing.

10 MR. GRAHAM: That is correct, Your Honor.

11 THE COURT: Thank you very much.

12 MR. GRAHAM: Thank you.

13 THE COURT: Okay.

14 MR. LEE: Your Honor, if you want, I can go back and
15 check the docket and see if there are things we can move if
16 that's --

17 THE COURT: No, I mean -- well, no, we can go -- at
18 this point go ahead. It may be that I take everything under
19 some -- you know, I don't know what -- I just don't know what's
20 contested and what -- so it may be that things are going to
21 wind up being taken under submission. But I'll hear argument
22 to the extent people have argument, but I have a number one
23 priority to get done before tomorrow.

24 MR. LEE: I will go back and see what we can remove
25 and to the extent to which we can't, I'll advise chambers as to

1 what's going ahead and what's being objected to, if I can.

2 THE COURT: Okay. And let me just -- I guess I'll say
3 something about this again tomorrow, the issues with respect to
4 borrower claims. And so as directed, I got two briefs; one
5 from SilvermanAcampora -- I see Mr. Nosek there -- and one from
6 the Debtors. And those briefs were helpful.

7 What I want to be able to do -- and I already -- I
8 mean, I guess I issued an opinion yesterday with respect to one
9 borrower claim where there was counsel involved, not a pro se.
10 And at least in the opinion that I filed yesterday, the
11 Debtors' objections were sustained substantially, but not
12 entirely. There was one claim that remained.

13 But what I would like to be able to do with -- and I
14 know I already got some proposals from the Debtors and special
15 borrower's counsel -- is design an efficient procedure for
16 dealing with borrower claims, many of which arise at least in
17 part with raised issues about loan modifications.

18 If the plan is confirmed, there is a borrower class
19 with money allocated to it and it's not an infinite sum. And
20 those who are entitled to participate in that class should.
21 And those who are not shouldn't. And the issue is finding the
22 most efficient and fair way to be able to deal with those
23 issues.

24 So, Mr. Nosek, I really do appreciate the brief that
25 your -- I appreciate the Debtors' brief too, but I think the

1 committee special borrower counsel did exactly what I wanted
2 done and it's very helpful to the Court.

3 I can say something about that again tomorrow when I
4 guess there -- but -- and I'm looking for help from counsel in
5 getting that done so we don't spend an infinite amount of time
6 trying to resolve issues. Maybe it helps further in trying to
7 settle some of those claims as well.

8 Mr. Eckstein?

9 MR. ECKSTEIN: Your Honor, if I may on this point,
10 because I think, as Your Honor knows, this is something that's
11 been the subject of a lot of ongoing attention. And Your Honor
12 will hear at confirmation the approach that was taken in the
13 plan to deal with borrower claims.

14 And I think, as Your Honor knows, one of the goals
15 was, in addition to making sure that there was adequate money
16 in the plan, that we also try to construct a process that was
17 going to minimize the sort of inefficiency, particularly for
18 individuals, many of whom didn't have counsel, that have to
19 deal with the bankruptcy claim administration process where
20 often you'd end up finding that you have to spend more to
21 defend a claim than you might get to recover.

22 And so one of the suggestions I would make in -- I
23 think the SilvermanAcampora firm will be able to take the lead
24 on that -- is the goal is that there is now a trustee for the
25 borrower trust that's contemplated. And I think the

1 expectation is to very quickly develop --

2 THE COURT: If you get the plan confirmed.

3 MR. ECKSTEIN: -- assuming the plan is -- if the plan
4 is not confirmed, then we have different problems. But
5 assuming the plan is confirmed, there is going to be a
6 structure in place. There'll be a trustee for the borrowers
7 trust.

8 And I think one of the things that can be done very
9 quickly once we get through confirmation is to maybe come back
10 to the Court, potentially even before the effective date, with
11 some suggested procedures for how to deal with the remaining
12 borrower claims consistent with what's contemplated in the
13 plan.

14 THE COURT: That's fine. I mean, look, for the pro se
15 borrower claims in particular I wouldn't expect those borrowers
16 to be able to identify that they have a causative action under
17 the particular state's law for unfair deceptive practices. And
18 so -- or the other causes of action that increasingly seem to
19 be recognized in many states across the country.

20 So I read a set of facts that are alleged and try and
21 understand whether that's -- that set of facts, incomplete
22 though it may be, appears to allege a causative action that's
23 been recognized. Okay.

24 As happens in many of those cases that the opinions
25 are cited, litigation goes on for a very long time. That's not

1 the process -- that's not the efficient process that I think
2 has to happen here. I mean, I think -- well, let me stop
3 there. We're not disagreeing.

4 MR. ECKSTEIN: I think that's right.

5 THE COURT: We're not disagreeing at all.

6 MR. ECKSTEIN: We're not disagreeing. But I think the
7 challenge will be to maybe lay out for the Court with
8 specificity exactly what procedures are contemplated.

9 THE COURT: Yeah. And I think borrowers have to
10 understand this is a fair process so it gives them a reasonable
11 opportunity to present their arguments and in particular an
12 understandable statement of damages of the -- when I some of
13 the claims and they claim tens of millions of dollars without
14 linking it to anything in particular, that has a sense of
15 unreality about it. But other times the claims are much more
16 specific and -- okay.

17 MR. ECKSTEIN: I do think between the briefs that have
18 been filed and the declarations that are going to be in the
19 record and hopefully the explanations --

20 THE COURT: Okay.

21 MR. ECKSTEIN: -- that will come in in connection with
22 confirmation, I think Your Honor will hopefully have a
23 comprehensive record of how --

24 THE COURT: Okay.

25 MR. ECKSTEIN: -- all of these issues are being

1 accounted for in the plan.

2 THE COURT: Okay. Let me just look quickly and see
3 whether I have any other questions I wanted to ask.

4 Anybody else want to be heard?

5 That's it for me. Thank you very much.

6 MR. KERR: Thank you, Your Honor.

7 THE COURT: We're adjourned.

8 So are you all delivering everything tomorrow or
9 Monday? What is happening?

10 MR. KERR: Your Honor, I think that under the schedule
11 we are delivering it tomorrow. I'll confirm that, but I think
12 that's the case.

13 THE COURT: Okay. So there's hopefully a diminishing
14 calendar in the morning that you can --

15 MR. KERR: Yeah. We'll -- I think -- I'll confirm. I
16 plan -- I think we're coming in at noon. That's when we have
17 to get it to you guys.

18 THE COURT: Okay. All right. So you and Mr. Cohen
19 keep working to see if you can --

20 MR. KERR: We will. Yeah.

21 (Whereupon these proceedings were concluded at 3:06 PM)

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C E R T I F I C A T I O N

I, Linda Ferrara, certify that the foregoing transcript is a true and accurate record of the proceedings.

Linda Ferrara

LINDA FERRARA

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Date: November 15, 2013

November 14, 2013

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